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**Rule of Law And The Problem of Enforcement in INDIA**

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## Abstract

Rule of law is a basic requirement in a democratic country like India. Promoting the Rule of Law at the national and international levels is at the heart of the United Nations' mission. The rule of law (also known as nomocracy from the Greek word *nomos* which means law and *kratos* which means power of rule) is the legal principle that law should govern a nation, as opposed to arbitrary decisions by individual government officials. It primarily refers to the influence and authority of law within society, particularly as a constraint upon behaviour, including behaviour of government officials. Besides being the most competent doctrine, enforcement of Rule of law is becoming difficult in modern context. Through this paper we have made an effort to highlight the problems faced in the enforcement of Rule of law.

## Introduction

Rule of Law is one the basic principle of the English Constitution. This doctrine has been enshrined in the constitution of USA as well in the Indian Constitution. The expression "Rule of law" has been derived from the French phrase-"la principle de legalite" that is a Government based on the principle of law. The phrase can be traced back to 16th century England by Sir Edward Coke, The Chief Justice in James I's reign is said to be the originator of this principle. He maintained the king must be under the God and the law and thus vindicated the supremacy of the law against the executives.

Later on it was popularized in the 19th century by British jurist A. V. Dicey. Dicey regarded Rule of law as the bed rock of British lgal system. In his classic book, "The Law and the Constitution" published in the year 1885. The concept was familiar to ancient philosophers such as Aristotle, who wrote "Law should govern"<sup>1</sup>.

Although credit for popularizing the expression "the rule of law" in modern times is usually given to Dicey<sup>23</sup>, development of the legal concept can be traced through history to many ancient civilizations, including ancient Greece, China, Mesopotamia, India and Rome<sup>4</sup>.

Rule of law implies that every citizen is subject to the law, including law makers themselves. In this sense, it stands in contrast to an autocracy, collective leadership, dictatorship, or oligarchy where the rulers are held above the law (which is not necessary by definition but which is typical).

The first known use of this English phrase occurred around 1500 A.D. Another early example of the phrase "rule of law" is found in a petition to James I of England in 1610. The title, Latin for "the law is king", subverts the traditional formulation *rex lex* ("the king is law").<sup>5</sup> John Locke also discussed this issue in his *Second Treatise of Government* (1690). The principle was also discussed by Montesquieu in *The Spirit of the Laws* (1748).<sup>6</sup> The phrase

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<sup>1</sup> Aristotle, *Politics* 3.16

<sup>2</sup> Wormuth, Francis, "The Origins of Modern Constitutionalism", 1949, p.28

<sup>3</sup> Bingham, Thomas, "The Rule of Law", Penguin, 2010, p.3

<sup>4</sup> Black, Anthony, "A World History of Ancient Political Thought", Oxford University Press, 2009

<sup>5</sup> "The Rule of Law", The Constitution Society. Retrieved 3 October 2014

<sup>6</sup> Tamanaha, Brian, "On the Rule of Law", Cambridge University Press, 2004, p.47

"rule of law" appears in Samuel Johnson's Dictionary (1755).<sup>7</sup> John Adams enshrined this principle in the Massachusetts Constitution by seeking to establish "a government of laws and not of men.

"In the United Kingdom the rule of law is a long-standing principle of the way the country is governed, dating from Magna Carta in 1215 and the Bill of Rights 1689.[19][33][34] In the 19th century, A. V. Dicey, a constitutional scholar and lawyer, wrote of the twin pillars of the British constitution in his classic work Introduction to the Study of the Law of the Constitution (1885); these two pillars are the rule of law and parliamentary sovereignty.

### **Meaning**

The Oxford English Dictionary has defined "rule of law" as "The authority and influence of law in society, esp. when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes."

Rule of law implies that every citizen is subject to the law. It stands in contrast to the idea that the ruler is above the law. The expression given by Dicey is one of the cardinal principles of English legal system. According to him Rule of Law means

1. Supremacy of law
2. Equality before law
3. Predominance of legal spirits

Dicey's thesis had its own merits and virtues. It worked as a touchstone to judge and test the validity of administrative actions but his theory was never fully operative in England even in his days. There were, and are many exceptions and restrictions to his doctrine.

### **The Modern Concept**

The modern concept of rule of law as propounded by Davis is fairly wide and includes following principles-

- Law and order
- Fixed rules
- Elimination of discretion
- Due process of law or fairness
- Principles of natural justice
- Preference of judges and ordinary courts of law to executive authorities and administrative tribunals
- Judicial review

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<sup>7</sup>Peacock, Anthony Arthur, "Freedom and the rule of law ", 2010, p. 24

- Derived from internationally accepted standards, the World Justice Project's definition of the rule of law is a system in which the following four universal principles are upheld:
- The government and its officials and agents as well as individuals and private entities are accountable under the law.
- The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
- The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
- Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

### **Problem of Enforcement**

Rule of law is a basic requirement in a democratic country. It runs like a golden thread through every provision of the constitution. It pervades over the entire field of administration. In a country like India having the largest democracy in the world the doctrine of Rule of Law is best suited. Our Indian constitution also lays emphasis on this by stating that Rule of Law is supreme and that every person is subject to the law of the land and is equally treated under law. Our constitution also provides for an independent judiciary above all which directly or indirectly means that there is no influence of arbitrary power. In India, the longest constitutional text in the history of the world has governed that country since 1950. Whereas the Constitution of India may have been deliberated to provide details that would cap the opportunity for judicial discretion, the more text there is in a constitution the greater opportunity the judiciary may have to exercise judicial review. According to Indian journalist Harish Khare, "The rule of law or rather the Constitution is in danger of being supplanted by the rule of judges."

Critiques have often maintained that the Rule of Law in India is merely a theory with no practical application. While it cannot be denied that the country is one where corruption runs rampant and according to 2012 World Justice Project data, India fares well on openness of government and democratic controls, in the category limited government powers, which evaluates the checks on government, India ranks 37th of the 97 countries surveyed around the world, is first among five in its region, and comes in second out of 23 lower-middle-income countries. Yet the rule of law that exists on paper does not always exist in practice. When it comes to procedural effectiveness, India fares poorly. In the categories of absence of corruption and order and security, India ranks 83rd and 96th globally.

Besides being the unique doctrine, enforcement of Rule of Law is being difficult in the modern context. The most important factors which are making the enforcement typical are the countries size and its population. India being the 7<sup>th</sup> largest country in the world with a recorded population of 1.2 billion is suffering from increased poverty and lack of education making enforcement of Rule of Law a big difficulty. Another big threat to Rule of Law is the mal administration.

The role of police now-a-days is not only to act as a protective body, but the role of police has changed into a welfare state from simply being a socialist state. We are still in infant migrating state where numerous efforts have been taken for being a welfare state but a lot still requires to be done.

Besides major problems there are still few other problems which make the enforcement of Rule of Law a big difficulty. Although we are all above of these problems and hear about them from every hook and corner and still nothing is done to cease them and make Rule of Law an easy going process.

The very first among them is corruption which is deep rooted in Indian society in each and every sphere. This is one of the major causes of failure of Rule of Law. The second most deeply rooted problem is delay in justice. Though India has independent judiciary which keeps a check on all but still making rule of Law a real difficulty.

Next cause of enforcement of Rule of Law is inefficient policy making and government actions. All the three actions organs of the government have to perform their functions honestly. They have to be honest on their part. To maintain the rule of law the executive have to act keeping in mind the Rule of Law. The legislative have to be very cautious while making laws and the actions of government should be such that it does not hamper the Rule of Law. These are some of the various causes which are making enforcement of Rule of Law real problem.

### **Conclusion**

For proper enforcement of Rule of Law and for removing the problem of enforcement from deep root following solution can be adopted. The very first thing which can be done is that law schools and legal educations should be promoted to encourage innovative ideas in shaping minds of lawyers. The advocates should be paid accordingly. There should be transparency in legal system. Government should be more accountable to the people. Government should make laws which are advantageous to check corruption and other regulations. We have laws like prevention of corruption act 1980, right to information act 2005, which are advantageous to check corruption but however these are not sufficient.

The rule of Law to persist should not be confusing and ever changing. It should not be ambiguous and dual meaning. For Rule of Law to run smoothly and efficiently the law should be clear, definite and explicit, the laws should not be misguiding so as to create chaos amongst people. If the laws are loose, vague, indefinite or uncertain; these become unenforceable.

Due to rapid growth during 20<sup>th</sup> century there is a change in the concept of role and function of police. The doctrine of Laissez Faire has given place to the doctrine of welfare state which has led to proliferation of police power and function. Keeping in mind the concept of welfare state the police personnel should be given adequate training to perform their job taking due care of proper attitudinal development. Better pay to the police will ensure faithfulness to the job and would definitely be an incentive to their work. The modern economist F. A. Hayek analyzed how the Rule of Law might be beneficial to the free market The efficiency of rule of law also depends upon the role played by the multi-national companies. So the companies should be open and transparent in their dealings with government. As its very clear that rule of law and economic development are directly related and should go hand in hand in a country like India to prosper which would directly increase the business, foreign

investment, employment and as a result would decrease crime, corruption and poverty. It is time for India to reinvest in its rule of law machinery. The situation is so dire that even modest changes will have a dramatic impact.

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